

Note – Some of the members of the Board of Adjustment, as well as City staff members, may attend this meeting virtually. For public health reasons, those who attend in person should consider personal hygiene, the use of facial coverings, and social distancing.



**BOARD OF ADJUSTMENT
AGENDA
August 25, 2021**

Registration Link: https://zoom.us/webinar/register/WN_E5lLJNRmSeG8nnlAZZ9zVA

- I. Call to Order**
- II. Approval of Minutes**
- III. Old Business**

- 1. I Street Apartments**
 - 4000 SW Modern Way 213 ([VAR21-0020](#))
 - Fence Height and Setback

Variance*

**Denotes public hearing*

Board of Adjustment
Minutes
August 11, 2021

Meeting called to order by Mrs. Holland.

Present: Joe Haynie, Jan Holland, Sam Pearson, Rustin Chrisco, Rick Rogers

Absent:

Staff: Tyler Overstreet, Baylea Birchfield, Dan Weese

Motion by Mr. Pearson, seconded by Mr. Haynie to approve the minutes of July 28, 2021 as written
Approved 5-0

New Business

Item #1

I Street Apartments, 4000 SW Modern Way, VAR21-0020

Baylea Birchfield reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Fence salesman, from Carnahan-White Fence Company, Springfield, MO speaks on the request.

Dan Weese, city engineer speaks on the item

There is discussion amongst Board members and staff.

Motion by Mr. Chrisco, seconded by Mr. Haynie to request applicant to provide more information and to
table the item.

Tabled 5-0

Item #2

David Van Brink, 704 SE 3rd Street, VAR21-0024

Baylea Birchfield reads the staff report.

Opened public hearing

No public comments

Closed public hearing

David Van Brink, applicant, is available in person to speak on the item

There is discussion amongst Board members and staff.

Approved 5-0

Item #3

Ecological Design Group, 548 SE C Street, VAR21-0025

Baylea Birchfield reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Shannon Norman, applicant, is available in person to speak on the item

There is discussion amongst Board members and staff.

A vote for the 2 ft setback on both South/West sides of property.

Approved 5-0

A vote for additional 2ft fence height on back of house, and western property line.

Approved 5-0

Item #4

Walmart Campus PD03, 1604 SE 5th Street, VAR21-0026

Baylea Birchfield reads the staff report.

Opened public hearing

No public comments

Closed public hearing

John Easterling, representative, is available in person to speak on the item

There is discussion amongst Board members and staff.

Rick Rogers, recuses from vote due to conflict of interest.

Condition of Approval #2 has been removed and replaced to state "The sign shall be displayed for a time not to exceed 18-months beginning from September of 2021."

Approved 4-0

Motion by Mr. Pearson, seconded by Mr. Haynie to adjourn the meeting.

Meeting adjourned

*A copy of this recording can be obtained from the Bentonville Planning Department.

Christian Togmus

BOARD OF ADJUSTMENT STAFF REPORT



Dean Powers

4000 SW Modern Way

BOA Date: 8/25/2021

Reviewer: Baylea Birchfield, Planning Tech

Project Number	VAR21-0020
Applicant / Current Owner	Dean Powers
Site Area	N/A
Current Zoning	R-4, High Density Residential
Variance Request	<i>Land Development Code, Article 1100, Design Standards, Section 1100.06, Fence design standards, Subsection g, Fence location and subsection h, fence design standards</i>

Property Description

This property is located at 4000 SW Modern Way. It is currently zoned R-4, High Density Multifamily Residential.

Regulation

According to Land Development Code, Article 1100, Design Standards, Section 1100.06, Fence design standards, Subsection h, Fence height, the maximum fence height for a fence or wall located in the front yard shall not exceed four (4) feet in height.

According to Land Development Code Article 1100, Section 1100.06, Fence design standards, section g, Fence location, a fence or wall shall be placed no closer than five (5) feet to the current or proposed public right-of-way as prescribed within the Master Street Plan.

Variance Request

The applicant is requesting a variance on the height allowance for the east fence line portion running parallel with I Street to be 6 feet rather than the 4 feet allowed by code. This is a variance of 2 feet.

The applicant also requests a fence location variance on their eastern property line. The applicant requests their fence be setback zero feet from their SW I Street property line as opposed to the five feet required by ordinance.

Background

According to the applicant's narrative, the fence height request will aid in security due to prior theft issues on the property.

The applicant also states that due to a significant amount of underground utilities and a 20-foot easement that extends into the parking lots, there are limitations of where their fence can be located.

This item was tabled at the August 11, 2021 Board of Adjustment Meeting.

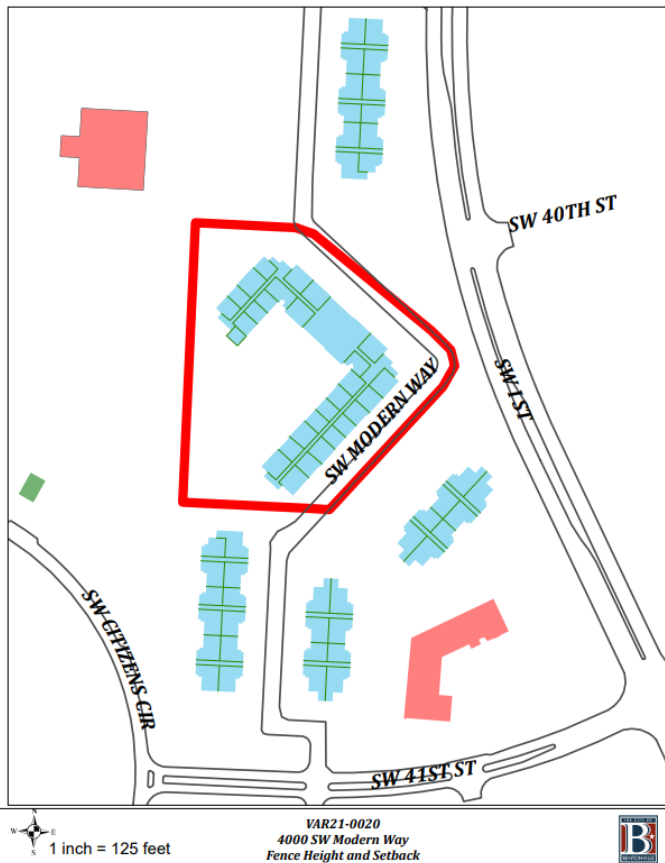
Public Comment

Staff has **NOT** received public comment regarding this request.

Conditions of Approval

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed layout, as provided by the Board of Adjustment and approved by the applicant.
2. The applicant shall be required to obtain an approved fence permit before construction.



BOARD OF ADJUSTMENT STAFF REPORT

Section 301.10.c, Standards of Approval, of the Zoning Code

Standards for approval. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

(1) The applicant demonstrates that:

- a. special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district;
- b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
- c. that special conditions and circumstances do not result from the actions of the applicant; and,
- d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

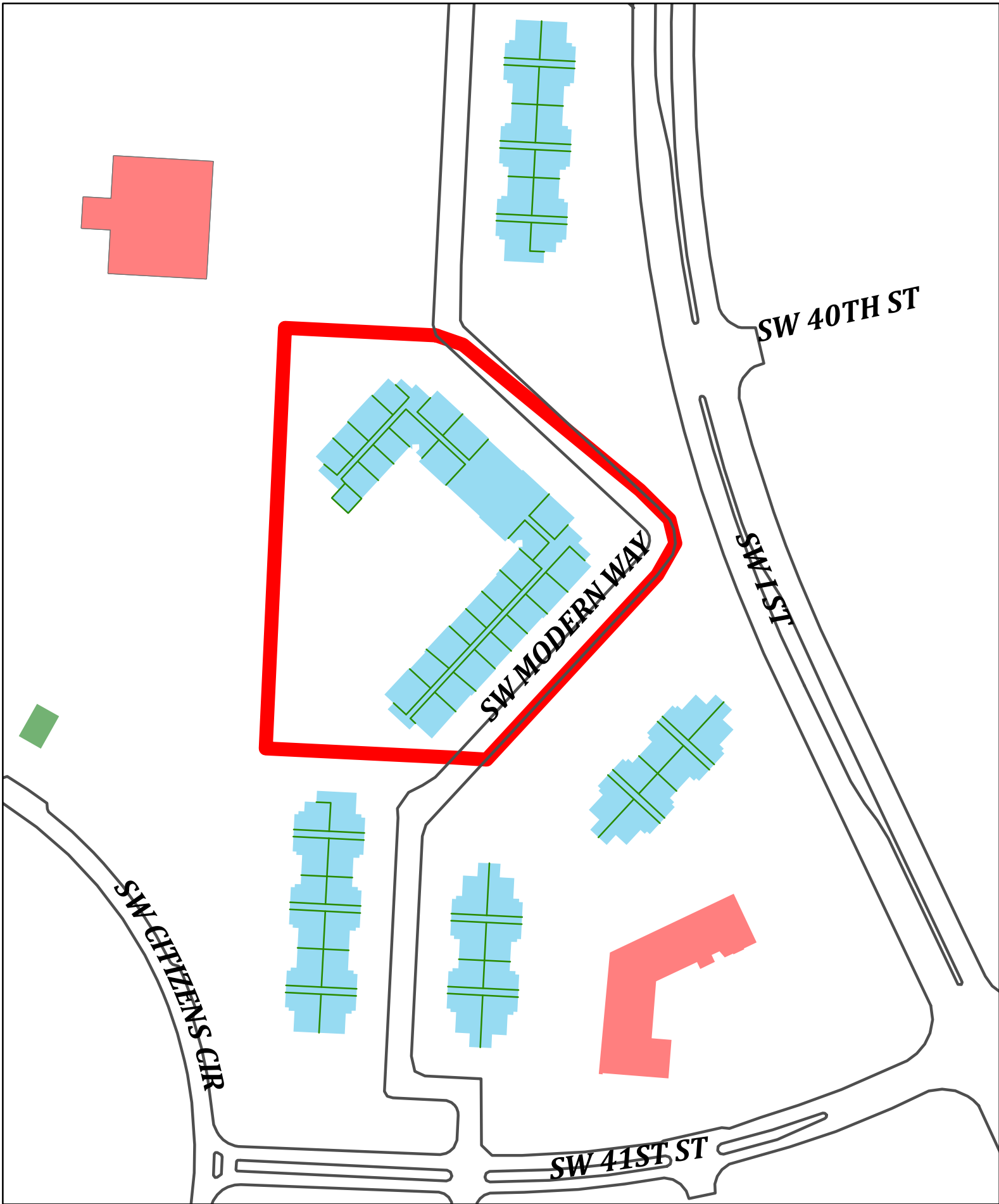
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(3) The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) *Conditions.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.



1 inch = 125 feet

VAR21-0020
4000 SW Modern Way
Fence Height and Setback



Carnahan-White, Inc.

1845 S. St. Hwy MM
SPRINGFIELD, MO 65802
PHONE: (417) 883-0733 FAX (417) 883-1152

#1, we would like to ask for a variance on the height allowance from 4' tall to 6' tall on the east fence line portion running parallel with I street. This is per the owners request for security due to theft issues.

#2, we would like a variance on the location of the east fence line to be on the property line. There is a significant amount of underground utilities that impact where the fence can be installed, also the 20' easement extends into the parking lots in multiple areas thus limiting the location of the fence.

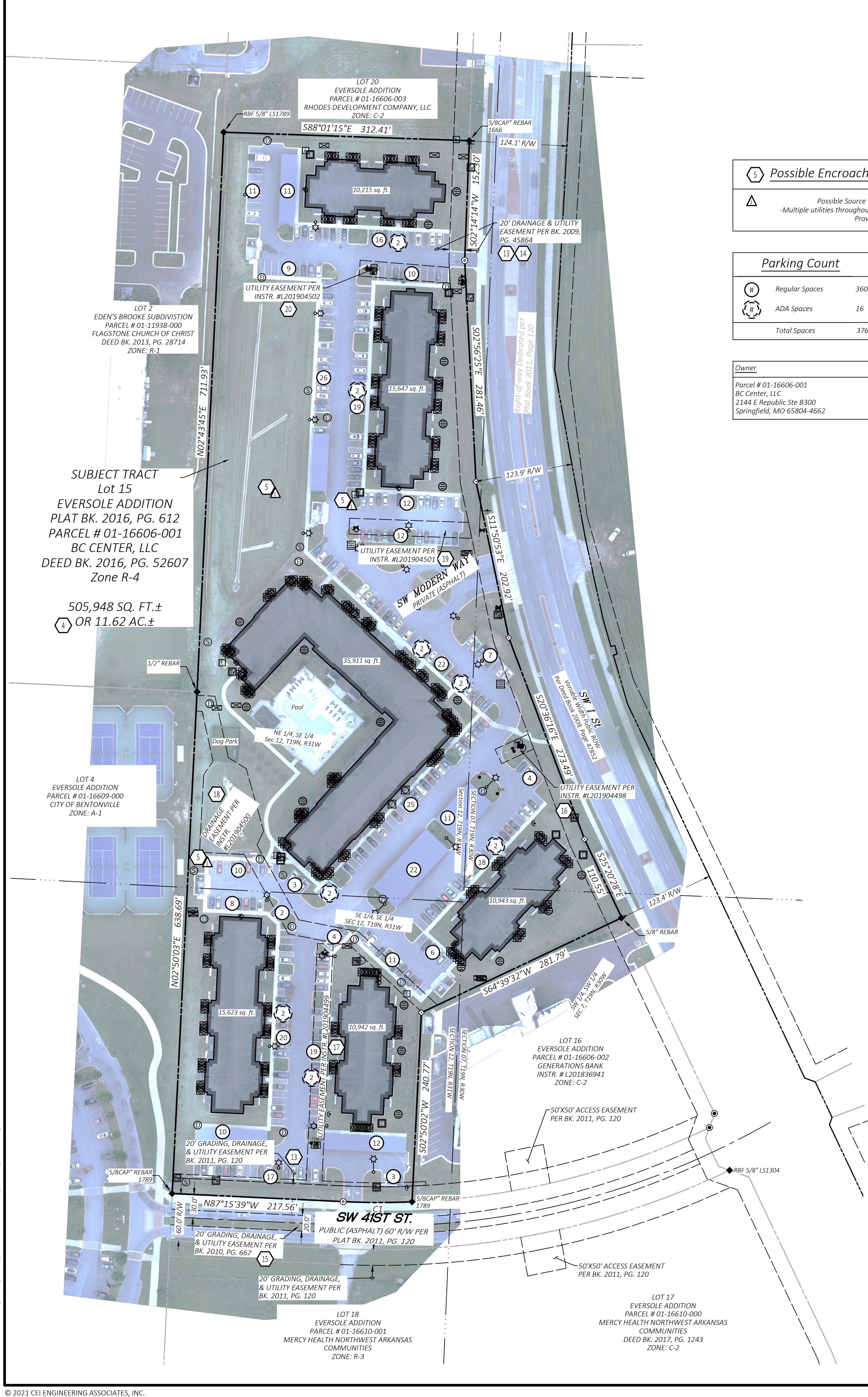
#3, we would like a variance on the south lines of fence behind the bank as the 5' off the line as required puts the fence line directly in a line of trees thus limiting the location of the fence.

#4, we would like a variance on the south side running alongside SW 41st st due to utilities in the way as well as a portion of this line the 20' easement is right up to the curb. We would ask to be 12' off of the property line as this allows a clean path to install a fence.

#5, we would like a variance on the west line from the pool house south to install on the property line as there is a line of trees 5' inside the property line thus limiting the location of the fence.

Thank you for your consideration,
Matt Brown

DRAWING LOCATION: S:\32003\3221\DRAWINGS\SURVEY\WORKING\3221\DATA.DWG - SAVED BY: KRAY



Convergence 1"1'735"
Combined Scale Factor: 0.9999631189
5/8" rebar, southeast property corner

Northing: 734874.26 Ft.
Easting: 657869.82 Ft.
Elevation = 1302.01'

0 80' 120' 160'
SCALE IN FEET

Possible Encroachment Chart	
	Possible Source of Encroachment -Multiple utilities throughout property with no Easement Provided-

Parking Count	
	Regular Spaces 360
	ADA Spaces 16
Total Spaces 376	

Owner	
Parcel # 01-16606-001 BC Center, LLC 2144 E Republic Ste B300 Springfield, MO 65804-4662	

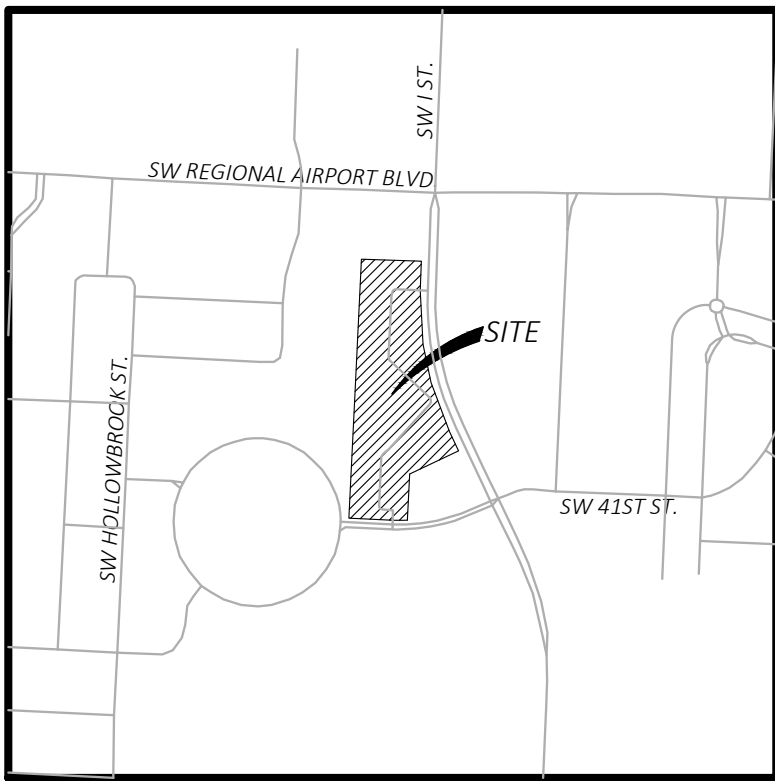
NOTES REGARDING TABLE "A" ITEMS:

- Item 2: An address of 4000 SW Modern Way was disclosed in documents, or observed while conducting the fieldwork.
- Item 3: By scaled map location and graphical plotting only. This property is located in unshaded Zone "X" which are areas determined to be outside the 0.2% annual chance floodplain determined by the National Flood Insurance Program, Flood Insurance Rate Map for Benton County, Arkansas.
Map Number: 05007C0255X
Map Revised: June 5, 2012
- Item 6: No current zoning report or letter regarding zoning classification was provided to the Surveyor, the following information was obtained from the Bentonville GIS map. This property is zoned R-4 (High Density Multifamily Residential). Building setbacks for zone R-4 are as follows:
- | | | | |
|---------|--|-------------------------------|---|
| Front : | 20 Feet | Garage, Street Facing: | 30 Feet from property line garage faces |
| Side : | 10 Feet (Interior) | Garage, Side or Rear loading: | 20 Feet from the front property line |
| Side : | 30 Feet (Interior adjacent to single-family) | Garage, Alley Facing: | 20 Feet from property line at alley |
| Side : | 20 Feet (Exterior) | | |
| Rear: | 25 Feet | | |
- Item 7: Buildings exist on the surveyed property.
- Item 9: Clearly identifiable striping, or constructed parking was observed.
- Item 16: No observable evidence of current earth moving work, building construction or building additions were found in the process of conducting the field work.
- Item 17: The surveyor was not aware of any changes in street Right-of-Way, and no observed evidence of street or sidewalk construction or repairs were found.

GENERAL NOTES:

- This survey does not purport to be a proposed tract split or replat, or any other subdivision plat as may be defined by city, county, or state law. The land owner is encouraged to check with the local planning/development authorities for proper platting procedures before proceeding with this development.
- Every document of record reviewed and considered as a part of this survey is noted hereon. Only the documents noted hereon were supplied to the surveyor.
- This plat represents an ALTA/NSPS Land Title Survey of the parcel recorded in Deed Records, DEED BK. 2016, PG. 52607 in the public records of Benton County, Arkansas.
- The contractor must determine that proposed structures are clear of all boundary lines, easements, and meet building setback requirements before construction begins.
- Basis of Bearings: All bearings and distances shown hereon are grid based on Arkansas State Plane Coordinate System, MAD83, North Zone.
- This survey is valid only if the drawing includes the seal and signature of the surveyor.
- This survey meets current Arkansas State Standards of Practice for Property Boundary Surveys and Plats.
- This survey is based on a title commitment provided by Fidelity National Title Insurance Company, File Number 21-4492 countersigned by City Title & Closing, LLC, Effective Date: June 21, 2021.
- Declaration is made to the original purchaser of the survey and those listed in the certification for the use of this transaction only and is not transferable to any additional institutions or subsequent owners.
- No attempt was made to show building setback lines graphically on the survey. The assignment, vacation, or orientation of setbacks that impact the usage rights of the property are determined by the local governing jurisdictional agency. Setback dimensions will be based on the orientation of the building(s) to be constructed as approved.
- No attempt has been made as a part of this boundary survey to obtain or show data concerning existence, size, depth, condition, capacity, or location of any utility or facilities.
- Subsurface and environmental conditions were not examined nor considered a part of this survey.
- Multiple utility services are located within easements abutting or within the bounds of subject tract.
- The locations of underground utilities as shown hereon are based on above ground structures as were visible at the time of survey, and/or from record drawings provided to the surveyor. The location of underground utilities/structures may vary from locations shown hereon. No excavations were made during the progress of this survey to locate underground utilities/structures.
- The contractor is advised to contact the 811 One-Call Center before any construction begins, depending on the state there is a possibility of a severe penalty for not making this call. Not all utility companies are members of the One-Call Systems. Therefore the contractor is advised to contact all non-members as well as the One-Call System.

Title Commitment provided by: Fidelity National Title Insurance Company, File Number 21-4492, Countersigned by City Title & Closing, LLC Effective Date: June 21, 2021.	
Exceptions	Effect on Survey
1. INTENTIONALLY DELETED.	
2. Taxes for the year 2021 and subsequent years, a lien not yet due and payable. Taxes for the year 2019 and prior years are paid.	Not survey related
3. Taxes for the year 2020, a lien due and payable, but unpaid.	Not survey related
4. Any inaccuracy in the area, square footage, or acreage of the Land, or attached plat, if any. The Company does not insure the area, square footage, or acreage of the Land.	Acreage shown hereon
5. Any encroachment, encumbrance, violation, variation, or adverse circumstances affecting the Title that would be disclosed by an ALTA/NSPS Land Title Survey of the Land and that could be ascertained by an inspection of the Land. (TO BE DELETED WITH ALTA/NSPS SURVEY)	As shown hereon
6. Rights of tenants in possession, as tenants only, under unrecorded residential leases. (TO BE NOTED AS A SUBORDINATE MATTER ON FINAL LOAN POLICY)	None presented to Surveyor
7. Easements, or claims of easements, not shown by the public records. (TO BE DELETED WITH EXECUTED OWNER DISCLOSURE AND AGREEMENT)	None presented to Surveyor
8. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records. (TO BE DELETED WITH EXECUTED OWNER DISCLOSURE AND AGREEMENT)	Not survey related
9. Taxes or special assessments, if any, which are not shown as existing liens by the Public Records. (TO BE DELETED WITH EXECUTED OWNER DISCLOSURE AND AGREEMENT)	Not survey related
10. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.	None presented to Surveyor
11. INTENTIONALLY DELETED.	
12. INTENTIONALLY DELETED.	
13. Twenty (20) foot grading, drainage and utility easement as shown on Plat filed for record Plat Book 2016 atpages 611 and 612, of the Records of Benton County, Arkansas.	As shown hereon
14. Grading, Drainage, Utility and Temporary Construction Easement Grant in favor of the City of Bentonville, Arkansas, a municipal corporation, dated September 8, 2009 and filed for record September 9, 2009, in Book 2009 at page 45864, of the Records of Benton County, Arkansas.	As shown hereon
15. Grading, Drainage, Utility and Temporary Construction Easement Grant in favor of the City of Bentonville, Arkansas, a municipal corporation, dated February 4, 2010 and filed for record February 10, 2010, in Book 2010 at page 6677, of the Records of Benton County, Arkansas.	As shown hereon
16. Utility Easement in favor of the City of Bentonville, Arkansas, dated January 29, 2019 and filed for record January 30, 2019, as instrument No. L201904498, of the Records of Benton County, Arkansas.	As shown hereon
17. Utility Easement in favor of the City of Bentonville, Arkansas, dated January 29, 2019 and filed for record January 30, 2019, as instrument No. L201904499, of the Records of Benton County, Arkansas.	As shown hereon
18. Drainage Easement in favor of the City of Bentonville, Arkansas, dated January 29, 2019 and filed for record January 30, 2019, as instrument No. L201904500, of the Records of Benton County, Arkansas.	As shown hereon
19. Utility Easement in favor of the City of Bentonville, Arkansas, dated January 29, 2019 and filed for record January 30, 2019, as instrument No. L201904501, of the Records of Benton County, Arkansas.	As shown hereon
20. Utility Easement in favor of the City of Bentonville, Arkansas, dated January 29, 2019 and filed for record January 30, 2019, as instrument No. L201904502, of the Records of Benton County, Arkansas.	As shown hereon
21. Title to, and easements in, that portion of the Land within SW Modern Way running over and across the Land.	No Documents provided
The land referred to in this Commitment is described as follows: Lot 15, of the Lot Split of Lot 1, Eversole Addition, an Addition to the City of Bentonville, Arkansas, as shown in Plat Record 2016 at Pages 611 and 612, Records of Benton County, Arkansas.	

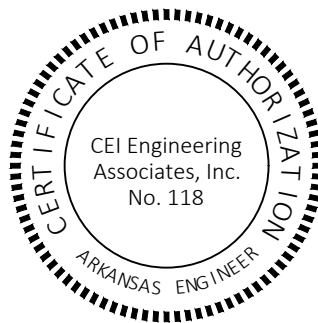


VICINITY MAP

NOT TO SCALE
Latitude: 36°19'50"N
Longitude: 94°13'24"W

Legend

	Boundary Line
	Adjoining Boundary Line
	Right-of-Way Line
	Easement Line
	Section Line
	Found Monument (As Noted)
	Set 5/8" Rebar "LS#1618"
	Found Nail (As Noted)
	Set Mag Nail w/Washer "LS#1618"
	Electric Meter
	Water Meter
	Drainage Manhole (DMH)
	Grate Inlet (GI)
	Grate Inlet (Circular) (GIC)
	Fire Hydrant
	Sewer Manhole (SMH)
	Sewer Clean Out
	Water Valve
	Fire Department Connection
	Air Conditioner Unit
	Irrigation Control Box
	Electric Riser
	Cable TV Riser
	Water Riser
	Cable TV Vault
	Electric Vault
	Telephone Vault
	Light Pole Overhanging
	Light Pole (1 Lamp)
	Warning Cable TV Sign
	Warning Gas Line Sign
	Parking Count
	ADA Parking Count



SURVEYOR'S CERTIFICATION TO:

BC Center, LLC, an Arkansas limited liability company
Fannie Mae
City Title & Closing, LLC
Fidelity National Title Insurance Company

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6a, 6b, 7a, 8, 9, 13, 15, 16, and 18 of Table A thereof. The field work was completed on June 30, 2021.

Date of Plat or Map: **7.8.2021**

Dustin Riley, Arkansas PLS #1618

State Survey Code: 500-19N-30W-0-07-300-04-1618

State Survey Code: 500-19N-30W-0-12-200-04-1618



CEI ENGINEERING ASSOCIATES, INC.

3108 SW REGENCY PKWY
BENTONVILLE, AR 72712
PHONE: (479) 273-9472
FAX: (479) 273-0844
CORPORATE TBPLS FIRM #10031500

3030 LBJ FREEWAY, SUITE 100
DALLAS, TX 75234
PHONE: (972) 488-3737
FAX: (972) 488-6732
BRANCH TBPLS FIRM #10194234

ALTA/NSPS Land Title Survey
BC Center, LLC
4000 SW Modern Way
Bentonville, Benton County, Arkansas



PROFESSIONAL OF RECORD DGR

DESIGNER JDC

FIELD WORK KTC

CEI PROJECT NUMBER 32221

DATE 7/8/2021

REVISION REV-0

ALTA/NSPS Land Title Survey

SHEET TITLE

SHEET NUMBER

1 OF 1